1948. (K) File No. B. Borstal sch 48.

Legal Debt.

B. BRANCH

Subject:— L.A. Bill No. XIX of 1948.

A Bill to amend the Bombay Borstal Schools Act 1929.

Bombay Act No. XXXIX of 1948

1.43 (E)

File No. B. Borstal Schools | 48

562- B

The requisite draft Bill is appended.

H.D.Proposition No.1 (at p.819).- This is carried out in clause 6 of the Bill.

H.D. Proposition No.2(at p.819).- Please see sub-section (5) of the proposed new section 17-B, in clause 6 of the Bill.

H.D. Proposition No.3 (at p. 819) This is carried out in sub-section 6 of the proposed new section 17-B, in clause 6 of the Bill.

H.D. Proposition No. 4(at p. 820) .- This is carried out in sub-section (8) of the proposed new section 17-B, in clause 6 of the Bill.

H.D. Proposition No. 5 (at p. 820) .- This is carried out in sub-section (5) of the proposed new section 17-B, in clause 6 of the Bill.

H.D. Proposition No. 6 (at p. 820) .- This is carried out in clause 2 and the proviso to sub-clause (iii) of clause 4 of the Bill.

H.D. Proposition No. 7 (at p. 821).- This is carried out in the proviso to new sub-section (2 of section 16, in clause 5 of the Bill.

H.D. Proposition No. 8 (at p. 821) .- This is carried out in clause 2 and sub-clause (iii) of clause 4 of the Bill.

H.D. Proposition No. 9(at p. 821) .- This is carried out in proposed new section 17-B, in clause 6 of the Bill.

H.D. Proposition No. 10 (at p. 822) .- This is carried out in clause 3 of the Bill.

H.D. Proposition No.11 (at p.822).- This is carried out in sub-clause (i) of clause 5 of t Bill.

The Bill does not require any sanction or recommendation under the Government of India Act.

The draft Statement of Objects and Reasons at pages 223-227 as amended in pencil is in order-.

Sd/- J.R.Dhurandar

14.12

Remembrancer of Legal Affairs.

D.O. to H.D., No. 9331 , dated the 17th ~~April~~ December 1938.

I.M.D./31.5
ic.

Office of the R.L.A.

A revised draft Bill and a revised Statement of Objects and Reasons are appended.

2. Para.3(2) of H.D. note at page 251 ante .- It is desirable to insert the words " or supervision" before the words "to one of imprisonment" where they occur for the second time in apra. 5 of the draft Statement of Objects and Reasons at page 225 ante. This has been done.

3. Para. 5 of H.D. note at page 251.- There is no objection to omitting the words "in the like manner and" in clause 3, as suggested by H.D.

4. Para. 7 of H.D.office note at page 253 ante .- With regard to absolute discharge as observed by Secretary, Home Department, revised sub-section (2) of section 16 substituted by clause 5 (ii) leaves it optional to the Provincial Government either to direct that the offender should be detained in a Borstal school or should be made to undergo imprisonment. It does not debar action under section 401 of the Criminal Procedure Code.

5. Para. 8 of H.D. note at page 253 ante .- There is no objection to substitute the words " and in every case where an offender has been directed to remain " for the words " or if such offender has been placed " in the new section 17B(4)

The provision in the latter part of sub-section (5) of this section 17B is necessary and should not be deleted. It provides for arrest of an offender during the pendency of proceedings against him. It is not covered by the provision in sub-section (3) which refers to arrest prior to the taking of such proceedings. In order to make the position clearer, the words "during the pendency of such proceedings " have been inserted after the word "and" where it occurs for the first time in this sub-section.

6. Under Secretary, Home Department's note at page 354 ante .- The following amendment may be made in the proviso to the existing section 21 of the Act. For the words "the substitution of an order ~~of~~ for detention in a Borstal school for transportation or imprisonment" the words "to substitute an order for detention in a Borstal school for a sentence of transportation or imprisonment" may be substituted A new clause 8 for this purpose is added to the revised draft Bill.

Sd/- J.R.Dhurandar
Remembrancer of Legal Affairs.

J.R. to H.D. No. 7563 , dated the 25th July 1939.

J.M.D. 1-8
le.

Amendment of section 18 of Bom. XVIII of 1929.

Bom. XVIII of 1929.

5. In sub-section (1) of section 18 of the Bombay Borstal Schools Act, 1929, hereinafter called the said Act, after the words " twenty years of age," the words, figures, letters and brackets "or where a licence granted under section 14 is revoked by the Provincial Government under clause (ii) of the proviso to sub-section(1) of section 15" shall be inserted.

V.M.D./1-6
4c.

ment of section 14 of Act XXVII of 1929.

5. After sub-section (1) of section 14 of the said Act, the following new sub-section shall be inserted, namely:-

"(1A) The Inspector General may, subject to the prescribed conditions, discharge any offender who had been previously granted a licence but whose licence was subsequently revoked under section 15 and grant him a fresh written licence and in such case the provisons of this Act shall apply as if such fresh licence had been granted under sub-section (1)".

.M.D. /1-6
e.

Amendment of section 15 of Bom. XVIII of 1939.

6. In subsection (1) of section 5 of the said Act, --

(i) for the words "and shall, at he request of", the words "and in the ase of a request made By" shall be ubstituted;

(ii) after the words "permitted ~~xxxiiii~~, to live ," the words, figures and letter " shall, after considering the report of the Investigating Committee submitted to him under section 17B" shall be inserted; and

(iii) at the end, the following proviso shall be added, namely:-

"Provided that if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal School, the Inspector General shall forward the repor of the Investigating Committee to the Provincial Government and the Provincial Government may --

(i) direct the Inspector General to ~~xxxxrevoke~~ the licence as provided in this sub-section, or

(ii) itself revoke the licence and commute the unexpired residue of the term of detention of the offender to a term of imprisonment as provided in section 12".

Amendment of section 16 of Bom. XVIII of 1939.

3. In section 16 of the said Act --

(i) in sub-section(1) after the word " conduct" the words "or progress" shall be inserted; and

(ii) for sub-section(2) , the following shall be substituted, namely:-

"(2) The Provincial Government may, after considering the report of the Investigating Committee, forwarded to it under section 17B, direct that the offender who is under supervision in accordance with sub-section (1) shall -

(a) again be detained in a Borstal school for such period as it may think fit, or

(b) if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal School undergo imprisonment of such description and for such period as it may direct:

Provided that the total period of supervision, detention and imprisonment under this section shall not exceed one year.

(3) The provisions of sub-section (2) of section 12 shall apply when an offender is directed to undergo imprison ment under sub-section (2) of this sect section ."

Insertion of new section 17B in Bom. XVIII of 1929.

6. After section 17A of the said Act, the following new section shall be inserted, namely-:-

"17B. (1) The Provincial Government may, by notification in the Official Gazette, appoint an Investigating Committee.

Investigating Committee to investigate into complaints against offenders discharged on probation, etc.:

(2) The Inspector General may, by an order in writing, require any offender--

(a) who is released on licence under section 14 or who is placed under supervision under section 16, and who is reported by the authority, institution, society or person under whose supervision he has been permitted to live or has been directed to remain, to be of bad behaviour or

(b) who has committed a breach of any of the conditions of the license granted to him under section14,

to appear before the Investigating Committee within such time and at such place as may be specified in the order.

(3) If the offender fails to appear before the Investigating Committee in accordance with the order made under sub-section (2), he may, on the requisition of the Inspector General or any officer authorized by him, be arrested by any officer of Police without warrant and without an order of a Magistrate and brought before the Investigating Committee.

(4) The Investigating Committee shall examine the offender and after making such enquiry as it thinks fit into his conduct submit its report to the Inspector General . If the Investigating Committee report that the conduct of the such offender has been such that he is unfit for further detention in a Borstal School and in every case where an offender had been directed to remain under supervision under section 16 , the Inspector General shall forward a copy of the report of the Investigating Committee to the Provincial Government.

(5) The offender shall, during the tendency of the proceedings under this section, be detained in a Borstal School or in a special ward, or such other suitable part of a prison as the Inspector General may by a special or general order direct; and during the pendency of such proceedings upon the requistion of the Inspector General, any officer of Police may arrest without warrant and without an order of a Magistrate any such offender and send him under custody to the Borstal School or prison as the case may be.

6. The period beginning from the date on which the order under sub-section (2) is passed by the Inspector General and ending with the day on which an order is passed by the Inspector General under section 15 or by the Provincial Government under section 15 or 16, as the case may be shall not be taken into consideration in

computing the total term of his detention of an offender in a Borstal School or in computing the period of one year referred to in section 16."

Amendment of section 19 of Bom. XVIII of 1929.

7. In sub-section (2) of section 19 of the said Act, after clause(l) the following new clause shall be inserted, namely:-

"(m) the constitution, powers and duties of the Investigating Committee."

Amendment of section 21 of Bom.XVIII of 1929.

8. In the proviso to section 21 of the said Act for the words "the substitution of an order for detention in a Borstal school for transportation or imprisonment" the words " to substitute an order for detention in a Borstal school for a sentence of transportation or imprisonment " shall be substituted.

Amendment of section 21 of Bom. XVIII of 1929.

8. In the proviso to section 21 of the said Act for the words "the substitution of an order for detention in a Borstal school for transportation or imprisonment" the words " to substitute an order for detention in a Borstal school for a sentence of transportation or imprisonment " shall be substituted.

V.M.D. /1-6-40.

Statement of Objects and Reasons.

Section 14 of the Bombay Borstal Schools Act, 1929 empowers the I.G. of Prisons to discharge an offender from a Borstal School and grant him a written licence in the prescribed form and on the prescribed conditions permitting him to live under the supervision and authority of such officer of Government, secular institution, religious society or responsible person as may be approved by the I.G. of Prisons and as such may be willing to take charge of the offender.-Section 16 of the Act empowers Government to direct an offender on completion of his term of detentio to remain under supervision for a furthe period not exceeding one year if his cond while detained in a Borstal Schools, has not been satisfactory. When offenders who are discharged on licence under section 14 or who are directed to remain under supervision under section 16 are adversel reported on, the action that can be taken under the Act as it stands is to detain them again in the Borstal School. It is considered necessary that before such action is taken, the cases of such offende should be examined by an Investigating Committee who would advise as to the action that should be taken in each such

case. It is therefore proposed that Government should have power to constitute Investigating Committees which would review the cases of such offenders when they are adversely reported on and make recommendations as to the action that should be taken in each such case.

2. The Investigating Committees would assemble from time to time at different places as may be convenient or necessary and offenders of the type referred to above would ~~ax~~ be required to appear before the Committees. When such an offender is called upon to appear before an Investigating Committee and fails to do so, it is considered necessary that he should be arrested by any police officer without a warrant and without the order of a magistrate and brought before the Committee.

3. Pending investigation of the offender's case by the Committee and issue of orders in his case it may be necessary to detain him in a jail- if there be no Borstal School at the place where the Committee is meeting.

4. It is also considered that the period intervening between the date on which an offender removes himself from supervision or is brought before the Committee till the date on which orders are ~~ax~~ passed on the recommendation of the Investigating

committee in regard to his case, should not be counted in computing the period of his detention or supervision.

5. Under section 18 Government are empowered to commute the unexpired residue of the term of detention of an offender to one of imprisonment while he is detained in a Borstal School. It is proposed that in cases in which an offender absconds discharged from a Borstal School on a licence granted under section 14 or directed to remain under supervision under section 16 misbehaves and in which after his case has been examined by the Investigating Committee it is considered a inexpedient to detain him again in the Borstal School Government should have similar power to commute the unexpired residue of the term of his detention or supervisionx to one of imprisonment.

6. Section 16 of the Act as it stands at present can be interpreted to mean that the period of supervision not exceeding one year that can be imposed on an offender under sub-section(1) would be in addition to the period of detention not exceeding one year that can be givenunder sub-section (2). It is proposed to make it clear that the period of supervision under sub-section (1) together with the period of detention under sub-section(2) of section 16 should bot exceed one year.

7. At present there is no provision in the Act under which an offender whose licence granted to him under section14 is revoked and who is detained again in the Borstal School, can again be released on licence. It is therefore proposed to empower the Inspector General of Prisons to re-release offende on licence.

8. Under section 16 an offender whose conduct while at the School is unsatisfactory can be directed to remain under supervision on completion of his term of detention. It is considered necessary that an offender whose progress in the School is bad should similarly be placed under supervision on completion of his term of detention.

9. The Bill is intended to carry out the above objects.

V.M.D. /31-8
4c.

Office of the A.L.A.

A revised draft Bill is sent herewith.

2. Para. (i) of H.D. note (page 63 ante).- A suitable provision is made in clause 6 of the Bill which provides for the insertion of a new section 13 B empowering the Inspector General to provide for the removal of an offender detained in a borstal school to a civil hospital for medical treatment as also for his return back to such school after medical treatment. It appears necessary to provide specifically that the period during which the offender is removed from the school for treatment should be considered as part of the period of his detention. Sub-section (2) of the new section 13 B provides accordingly. A consequential change appears to be necessary in section 18 providing for the arre of an offender escaping from a civil hospital while removed there for undergoing treatment. Clause 11 provides for such consequential change. H.D. should kx verify whether the provisions made by clauses 6 and 11 carry out its intention.

3. Para.(ii) of H.D. note (page 63 ante) .- The first proposal contained in this para., namely, to provide for detaining in a Borstal School a person against whom an order under section 123 of the Criminal Procedure Code is made, is carried out by an amendment of section 11 as provided in clause of xhx the Bill. The next proposal contained in th para. is for making a similar provision in cases persons whose sentences are suspended under section 426 of the Criminal Procedure Code. This proposal, however, does not appear to be a proper one. Sectio 426 empowers the courts mentioned therein to suspe the execution of a sentence pending the examinatio the record of an inferior criminal court. An orde for suspension under the section is discretionary

xxxxxxxxx

a court would not ordinarily make such order unless it is of the opinion that the person sentenced should not undergo punishment in execution of the sentence pending the decision after such examination. To send a person to a Borstal school after an order of suspension is passed under section 435 would amount practically to nullifying the discretionary power given to the courts under this section. The proposed amendment would thus be derogatory of the spirit of the provision containted in section 435. No provision, therefore, as suggested has been made in the Bill. H.D. is requested to reconsider its proposal.

4. Para.(iii) of H.D. note (para 64 ante) .- Clause 4 of the Bill provides for the amendments suggested in this para.

5. Para.(iv) of H.D. note (page 64 ante) .- Clause 4 and 5 provide for the amendments suggested this para.

6. Para.(v) of H.D.note (page 64 ante) .- Clause 7 provides for the necessary amendment.

7. Para.(vi) of H.D. Note (page 65 ante) .- The necessary provision has been made in clause 8(2) of the Bill. Clause 8(1) incorporates the amendments contained in clause 4 of the old bill (page 11 ante).

8. Para.(vii) of H.D. note (page 65 ante) .- Clause 9 of the draft Bill which is the same as clause 5 of the old bill makes the necessary provision.

9. Para.(viii) of H.D. note (pages 65-66ante) .- Claus 10 which is the same as clause 6 of the old Bill provide for the necessary amendments.

10. Para.(ix) of H.D. note (page 67 ante) .- Clause 12 contains the necessary amendment.

11. Para.(x) of H.D. note (page 67 ante) .- The proposal in this para. is that an offender escaping from a Borstal school or from supervision, if arrested, should be taken back on the authority of the original warrant. The proposal is not quite clear. Under section 18 of the Bombay Borstal Schools Act when such offender escapes

he can be arrested by a police officer without warrant and without an order of a Magistrate and sent back to the Borstal School or to the authority, society or person as the case may be. It appears that this would be a sufficient authority for receiving the offender back in the school and detaining him there for the remaining period of detention . H.D., therefore, may consider whether any further provisi is really necessary. If the H.D. considers that a provision is necessary, it is requested to state clearly the nature of such provision.

12. Para (xi) of H.D. note (page 67 ante) .- In order to give a free hand to the appllate court or the court of revision, the best course will be to delete the whole of the proviso to section 21. If the proviso is deleted, the appellate court or the court of revision would be free to pass any order which it is competent to pass under the Code of Criminal Procedure in an appeal or revision against an order of sentence of imprisonment. Clause 13 therefore provides for the deletion of this proviso.

13. The subject-matter of the Bill falls under entries 4 and 37 in List II and entry 2 in List III in the Seventh Schedule to the Government of India Act, 1935. The Bill does not require any sanction or recommendation under the said Act. The provision of clause 2 of the Bill are repugnant to the provisions of the Criminal Procedure Code - a matter falling under the Concurrent Legislative List in the Seventh Schedule. It would, therefore, be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107 (2) of the Government of India Act, 1935.

14. The S.O.R. (pages 73-77 ante) as amended, is legally in order.

Sd/- P.M.Lad. 9-2-

Remembrancer of Legal Affairs.

U.R. to H.D. No.1390 , dated 9th February 1948

No. 2455.
Legal Department,
Bombay Castle, 11th March 1948.

From

P.M.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Legal Department;

To

The Private Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay Borstal School Act, 1929.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor an authentic copy of the Bill to amend the Bombay Borstal Schools Act, 1929, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 24th February 1948, and on the 3rd March 1948, respectively.

2. The subject-matter of the Bill falls under entries 4 and 37 in List II and entry 2 in List III in the Seventh Schedule to the Government of India Act, 1935. As the provisions of clause 2 of the Bill are repugnant to the provisions of the Code of Criminal Procedure, 1898, which is an existing law relating to a matter falling under the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

3. I also forward herewith six copies of each of the items Nos. 1 to 3 and three copies of item No.4 of the papers noted in the Margin. The bill was not referred

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1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
3. Bill as read for the third time and passed by the Bombay Legislative Council.

4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 24th February 1948, and of the Bombay Legislative Council dated the 3rd March 1948.

Select Committee.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- P.M.Lad.
11-3
Secretary to the Government of Bombay.
Legal Department.

Through

The Secretary to the Government of Bombay,

Home Department,

V.M.D./1-6
4c.

No. P.S.G.- 1312
Office of the Private Secretary to the Governor,
Government House,
Bombay 15 March 1948.
Bombay,

From

L.M. Madkarni, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislature Department,
Council Hall, Bombay.

Subject: The Bombay Borstal Schools (Amendment) Bill, 1948.

Sir,

With reference to the above-mentioned Bill which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and Bombay Legislative Council held on the 24th February and 3rd March 1948, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as the provisions of clause 2 of the Bill are repugnant to the provisions of the Code of Criminal Procedure, 1898, which is an existing law relating to a matter falling under the Concurrent Legislative List, it is necessary to reserve the Bombay Borstal Schools (Amendment) Bill, 1948, for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of His Excellency the Governor-General.

Your obedient servant,

L.M. MADKARNI.

Private Secretary
to the Governor of Bombay.

No. P.S.G.- 1313
Office of the Private Secretary to the Governor,
Government House,
Bombay, 15 March 1948.

Copy forwarded with compliments for information to -

(1) The Secretary to Government, Legal Department, with reference to his letter No. 2455, dated 11th March 1948.

(2) The Secretary to Government, Home Department, with reference to his endorsement No. 6020/3-V , dated 12th March 1948.

By order of the Governor of Bombay,

Sd/-
For Private Secretary
to the Governor of Bombay.

V.M.D./1-6

No. P.S.G. - 1872.

FROM

L. M. Phadkarni, Esquire, I.C.S.,
Private SECRETARY TO THE GOVERNOR OF BOMBAY.

TO

The Secretary to the Government of Bombay,
Legal Department.

GOVERNMENT HOUSE.

BOMBAY, 29th April 1948.

Subject: The Bombay Borstal Schools (Amendment) Bill, 1948.

Sir,

With reference to the correspondence resting with my letter No. P.S.G. - 1731, dated the 16th April 1948, I am to return herewith the authentic copy of the Bombay Borstal Schools (Amendment) Bill, 1948, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-
For Private Secretary to the Governor of Bombay.

V.M.D./1-A
46.

Bills.
A Bill to amend the Bombay Borstal Schools Act, 1929.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1735
Bombay Castle, 20th February 1948.

RESOLUTION :- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette dated the 18th February 1948 , as Bill No. XIX of 1948.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Knannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 23rd February 1948.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

Sd/- S. L. CHAUDHARI,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Bill and Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and S.O.R. may be forwarded to the Bombay Legislature Department for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department and 20 copies for the use of the Home Department).

The Home Department,
The Oriental Translator to Government,
The Bombay Legislature Department;
The Director of Publicity, Bombay,
The Enquiry Officer for the Secretariat
Bombay.
} with a copy of the Bill and S.O.R.

Acts.
Publication of the Bombay Borstal Schools (Amendment) Act, 1948

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 4262.
Bombay Castle, 1st May 1948.

Letter to the Private Secretary to the Go....., No. 2435, dated the 11th March 1948.

Letter from the Private Secretary to the Governor, No. P.S.G.- 1678, dated the 29th April 1948.

"With reference to the correspondence resting with my letter No. P.S.G.- 1781, dated the 16th April 1948, I am to return herewith the authentic copy of the Bombay Borstal Schools (Amendment) Bill, 1948, with His Excellency the Governor-General's assent signified thereon."

RESOLUTION:- The law should be published as Bombay Act No.XXXIX of 1948, in the Bombay Government Gazette, dated the 1 st May 1948.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By order of the Governor of Bombay,

Sd/- S.L. CHAUDHARI,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay, (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Deptt

The Home Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay,
The Enquiry Officer for the Secretariat, Bombay,
) with a copy of the Act.

V.M.D. /1.6
46.

SMB 27/6

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

FRIDAY, 20TH FEBRUARY 1948.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XIX OF 1948.

A Bill to amend the Bombay Borstal Schools Act, 1929

WHEREAS it is expedient to amend the Bombay Borstal Schools Act, 1929, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Bom. XVIII of 1929.

1. This Act may be called the Bombay Borstal Schools (Amendment) Act, 1948. Short title.

2. In sub-section (*1*) of section 11 of the Bombay Borstal Schools Act, 1929, hereinafter called the said Act,— Amendment of section 11 of Bom. XVIII of 1929.

Bom. XVIII of 1929.

(*i*) for the words "passed either before or after the commencement of this Act" the words and figures "passed under any law or undergoing imprisonment under an order made under section 123 of the Code of Criminal Procedure, 1898, for failure to give security" shall be substituted ;

of 1898.

(*ii*) after the words "his sentence" the words "or of the period of imprisonment which he is liable to undergo for failure to give security, as the case may be," shall be inserted ; and

(*iii*) after the word "sentenced" the words "or the period of imprisonment which he is liable to undergo for failure to give security, as the case may be" shall be inserted.

Amendment of section 12 of Bom. XVIII of 1929.

3. In sub-section (*1*) of section 12 of the said Act,—

(*i*) after the words "to exercise" the words "or to be likely to exercise" shall be inserted; and

(*ii*) after the words "twenty years of age" the words, figures and brackets "or where a licence granted under section 14 is revoked by the Provincial Government under clause (ii) of the proviso to sub-section (*1*) of section 15 or is, in the opinion of the Provincial Government, otherwise unsuitable for training in a Borstal school," shall be inserted.

Amendment of section 13 of Bom. XVIII of 1929.

4. In sub-section (*2*) of section 13 of the said Act, after the words "in British India" the words "or in an Acceding State" shall be inserted.

Amendment of section 13A of Bom. XVIII of 1929.

5. In section 13A of the said Act,—

(*i*) in sub-section (*1*)—

(*a*) after the words "British India" the words "or in an Acceding State" shall be inserted;

(*b*) after the words "the said province" the words "or the Government of the said Acceding State" shall be inserted; and

(*ii*) in sub-section (*2*) after the words "British India" the words "or in an Acceding State" shall be inserted.

Insertion of new section 13B in Bom. XVIII of 1929.

6. After section 13A of the said Act, the following new section shall be inserted, namely :—

Removal of person detained to civil hospital in Province for medical treatment.

"13-B. (*1*) If an offender detained in a Borstal School is suffering from any illness and the Inspector-General is satisfied that it is not possible to render to him proper medical care or treatment in the school, the Inspector-General may provide for the removal of such offender to any civil hospital in the Province for the purpose of undergoing medical treatment and for his return to the school after such treatment is undergone.

(*2*) The period during which an offender is absent from a Borstal school under sub-section (*1*) shall, for the purposes of computing his term of detention in the school, be deemed to be part of that detention."

Amendment of section 14 of Bom. XVIII of 1929.

7. After sub-section (*1*) of section 14 of the said Act, the following new sub-section shall be inserted, namely :—

"(*1A*) The Inspector-General may, subject to the prescribed conditions, discharge any offender who had been previously granted a licence but whose licence was subsequently revoked under section 15 and grant him a fresh written licence and in such case the provisions of this Act shall apply as if such fresh licence had been granted under sub-section (*1*)."

8. In section 15 of the said Act,— Amendment of section 15 of Bom. XVIII of 1929.

(*1*) in sub-section (*1*)—

(i) for the words "and shall, at the request of" the words "and in the case of a request made by" shall be substituted ;

(ii) after the words "permitted to live" the words, figures and letter "shall, after considering the report of the Investigating Committee submitted to him under section 17B" shall be inserted ; and

(iii) at the end, the following proviso shall be added, namely :—

"Provided that, if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school, the Inspector-General shall forward the report of the Investigating Committee to the Provincial Government and the Provincial Government may—

(i) direct the Inspector-General to revoke the licence as provided in this sub-section, or

(ii) itself revoke the licence and commute the unexpired residue of the term of detention of the offender to a term of imprisonment as provided in section 12." ;

(*2*) after sub-section (*2*) the following new sub-section shall be inserted, namely :—

"(*3*) On the revocation of a licence under sub-section (*2*), the period beginning from the date on which the offender removed himself from supervision till the date on which he is arrested shall, subject to the provisions of section 17, be excluded in computing the period for which he has been ordered to be detained in a Borstal school."

In section 16 of the said Act,— Amendment of section 16 of Bom. XVIII of 1929.

(i) in sub-section (*1*) after the word "conduct" the words "or progress" shall be inserted ; and

(ii) for sub-section (*2*), the following shall be substituted, namely :—

"(*2*) The Provincial Government may, after considering the report of the Investigating Committee forwarded to it under section 17B, direct that the offender who is under supervision in accordance with sub-section (*1*) shall—

(*a*) again be detained in a Borstal school for such period as it may think fit, or

(*b*) if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school, undergo imprisonment of such description and for such period as it may direct :

Provided that the total period of supervision, detention and imprisonment under this section shall not exceed one year.

(*3*) The provisions of sub-section (*2*) of section 12 shall apply when an offender is directed to undergo imprisonment under sub-section (*2*) of this section."

Insertion of new section 17B in Bom. XVIII of 1929.

10. After section 17A of the said Act, the following new section shall be inserted, namely :—

Investigating Committee to investigate into complaints against offenders discharged on probation, etc.

"**17B.** (*1*) The Provincial Government may, by notification in the *Official Gazette*, appoint an Investigating Committee.

(*2*) The Inspector-General may, by an order in writing, require any offender—

(*a*) who is discharged on licence under section 14 or who is placed under supervision under section 16, and who is reported by the authority, institution, society or person under whose supervision he has been permitted to live or has been directed to remain, to be of bad behaviour, or

(*b*) who has broken any of the conditions of the licence granted to him under section 14,

to appear before the Investigating Committee within such time and at such place as may be specified in the order.

(*3*) The Investigating Committee shall examine the offender and after making such enquiry as it thinks fit into his conduct submit its report to the Inspector-General. If the Investigating Committee report that the conduct of such offender has been such that he is unfit for further detention in a Borstal school and in every case where an offender had been directed to remain under supervision under section 16, the Inspector-General shall forward a copy of the report of the Investigating Committee to the Provincial Government.

(*4*) The offender shall, during the period of the proceedings under this section, be detained in a Borstal school or in a special ward, or such other suitable part of a prison as the Inspector-General may by general or special order direct.

(5) If the offender fails to appear before the Investigating Committee in accordance with the order made under sub-section (2) or escapes while detained under sub-section (4), he may, on the requisition of the Inspector-General or any officer authorized by him in this behalf, be arrested by any officer of police without warrant and without an order of a Magistrate and brought before the Investigating Committee or sent under custody to the place of detention under sub-section (4), as the case may be.

(6) The period beginning from the date on which the order under sub-section (2) is passed by the Inspector-General and ending with the day on which an order is passed by the Inspector-General under section 15 or by the Provincial Government under section 15 or 16, as the case may be, shall be excluded in computing the total term of his detention in a Borstal school or in computing the period of one year referred to in section 16."

Amendment of section 18 of Bom. XVIII of 1929.

11. In section 18 of the said Act, after the words "from a Borstal school" the words "or has escaped from a civil hospital to which he was removed for treatment under section 13B" and after the words "to the Borstal school" the words "or to the civil hospital" shall be inserted.

Amendment of section 19 of Bom. XVIII of 1929.

12. In sub-section (2) of section 19 of the said Act, after clause (l) the following new clause shall be inserted, namely :—

"(*m*) the constitution, procedure, powers and duties of the Investigating Committee."

Amendment of section 21 of Bom. XVIII of 1929.

13. The proviso to section 21 of the said Act shall be deleted.

STATEMENT OF OBJECTS AND REASONS.

The experience of the Bombay Borstal Schools Act, 1929, has shown necessity for some minor changes. The draft Bill is intended to carry out necessary amendments in order to make these changes.

NOTES ON CLAUSES.

Clause 2.—This amends section 11 of the Act so as to provide for the detention in a Borstal School of a lad who is undergoing imprisonment under an order made under section 123 of the Code of Criminal Procedure, 1898, for failure to give security.

Clause 3.—This widens the scope of section 12 of the Act,

Clauses 4 *and* 5.—These amend sections 13 and 13A of the Act so as to permit the transfer of a lad from a Borstal School in this Province to an acceding state and *vice versa*.

Clause 6.—This inserts a new section, section 13B in the Act. The new section empowers the Inspector-General of Prisons to transfer a lad from a Borstal School to any Civil Hospital in the Province for the purpose of undergoing medical treatment and after such treatment is over to re-transfer him to the School.

Clause 7.—This empowers the Inspector-General of Prisons to release again on licence a lad whose licence has been revoked.

Clause 8.—This amends section 15 of the Act so as to enable Government *inter alia* to commute the unexpired residue of the term of detention of an offender to a term of imprisonment. It also provides that the period from the date on which the offender removed himself from supervision till the date on which he is arrested should be excluded from the computation of the total period of detention.

Clause 9.—This widens the scope of section 16 of the Act by providing *inter alia* for the supervision of an offender whose progress in the Borstal School is not satisfactory. It also makes it clear that the total period of supervision, detention and imprisonment under section 16 shall not exceed one year.

Clause 10.—This inserts a new section, section 17B, which confers on Government the power to constitute an investigating committee to review the cases of lads (1) who are discharged on licence under section 14 or placed under supervision under section 16 and who are reported to be of bad behaviour, or (2) who have broken any of the conditions of the licence granted to them under section 14. In each such case the Committee will make recommendations as to the action that should be taken.

Clause 11.—In view of clause 6 of the Bill, a consequential change is necessary in section 18 providing for the arrest of an offender escaping from a Civil Hospital while removed there for undergoing treatment.

Clause 12.—This is an amendment to section 19 of the Act in consequence of clause 10 of the Bill.

Clause 13.—This deletes the proviso to section 21 of the Act so as to give offenders the right of appeal, leaving the Appellate Courts or the courts of revision free to pass any order which they are competent to pass under the Code of Criminal Procedure, in an appeal or revision against an order of sentence of imprisonment.

(Signed) MORARJI DESAI.

Dated, 18th February 1948

By order of the Governor of Bombay,

P. M. LAD,

Secretary to the Government of Bombay,

Legal Department.

Bombay, dated 20th February 1948.

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8. In section 15 of the said Act,— Amendment of section 15 of Bom. XVIII of 1929.

(*1*) in sub-section (*1*)—

(i) for the words "and shall, at the request of" the words "and in the case of a request made by" shall be substituted;

(ii) after the words "permitted to live" the words, figures and letter "shall, after considering the report of the Investigating Committee submitted to him under section 17B" shall be inserted; and

(iii) at the end, the following proviso shall be added, namely:—

"Provided that, if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school, the Inspector-General shall forward the report of the Investigating Committee to the Provincial Government and the Provincial Government may—

(i) direct the Inspector-General to revoke the licence as provided in this sub-section, or

(ii) itself revoke the licence and commute the unexpired residue of the term of detention of the offender to a term of imprisonment as provided in section 12.";

(*2*) after sub-section (*2*) the following new sub-section shall be inserted, namely:—

"(*3*) On the revocation of a licence under sub-section (*2*), the period beginning from the date on which the offender removed himself from supervision till the date on which he is arrested shall, subject to the provisions of section 17, be excluded in computing the period for which he has been ordered to be detained in a Borstal school."

9. In section 16 of the said Act,— Amendment of section 16 of Bom. XVIII of 1929.

(i) in sub-section (*1*) after the word "conduct" the words "or progress" shall be inserted; and

(ii) for sub-section (*2*), the following shall be substituted, namely:—

"(*2*) The Provincial Government may, after considering the report of the Investigating Committee forwarded to it under section 17B, direct that the offender who is under supervision in accordance with sub-section (*1*) shall—

(*a*) again be detained in a Borstal school for such period as it may think fit, or

(*b*) if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school, undergo imprisonment of such description and for such period as it may direct:

Provided that the total period of supervision, detention and imprisonment under this section shall not exceed one year.

(*3*) The provisions of sub-section (*2*) of section 12 shall apply when an offender is directed to undergo imprisonment under sub-section (*2*) of this section."

Insertion of new section 17B in Bom. XVIII of 1929.

10. After section 17A of the said Act, the following new section shall be inserted, namely:—

Investigating Committee to investigate into complaints against offenders discharged on probation, etc.

"**17B.** (*1*) The Provincial Government may, by notification in the *Official Gazette*, appoint an Investigating Committee.

(*2*) The Inspector-General may, by an order in writing, require any offender—

(*a*) who is discharged on licence under section 14 or who is placed under supervision under section 16, and who is reported by the authority, institution, society or person under whose supervision he has been permitted to live or has been directed to remain, to be of bad behaviour, or

(*b*) who has broken any of the conditions of the licence granted to him under section 14,

to appear before the Investigating Committee within such time and at such place as may be specified in the order.

(*3*) The Investigating Committee shall examine the offender and after making such inquiry as it thinks fit into his conduct submit its report to the Inspector-General. If the Investigating Committee report that the conduct of such offender has been such that he is unfit for further detention in a Borstal school and in every case where an offender had been directed to remain under supervision under section 16, the Inspector-General shall forward a copy of the report of the Investigating Committee to the Provincial Government.

(*4*) The offender shall, during the period of the proceedings under this section, be detained in a Borstal school or in a special ward, or such other suitable part of a prison as the Inspector-General may by general or special order direct.

(5) If the offender fails to appear before the Investigating Committee in accordance with the order made under sub-section (2) or escapes while detained under sub-section (4), he may, on the requisition of the Inspector-General or any officer authorized by him in this behalf, be arrested by any officer of police without warrant and without an order of a Magistrate and brought before the Investigating Committee or sent under custody to the place of detention under sub-section (4), as the case may be.

(6) The period beginning from the date on which the order under sub-section (2) is passed by the Inspector-General and ending with the day on which an order is passed by the Inspector-General under section 15 or by the Provincial Government under section 15 or 16, as the case may be, shall be excluded in computing the total term of his detention in a Borstal school or in computing the period of one year referred to in section 16."

Amendment of section 18 of Bom. XVIII of 1929.

11. In section 18 of the said Act, after the words " from a Borstal school " the words " or has escaped from a civil hospital to which he was removed for treatment under section 13B " and after the words " to the Borstal school " the words " or to the civil hospital " shall be inserted.

Amendment of section 19 of Bom. XVIII of 1929.

12. In sub-section (2) of section 19 of the said Act, after clause (1) the following new clause shall be inserted, namely :—

" (m) the constitution, procedure, powers and duties of the Investigating Committee."

Amendment of section 21 of Bom. XVIII of 1929.

13. The proviso to section 21 of the said Act shall be deleted.

Bk Hb 419—2

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XIX OF 1948.]

(As read for the third time and passed by the Legislative Assembly on the 24th February 1948.)

(As read for the third time and passed by the Legislative Council on the 3rd March 1948.)

A Bill to amend the Bombay Borstal Schools Act, 1929.

[Mr. Morarji Desai, M.L.A.]

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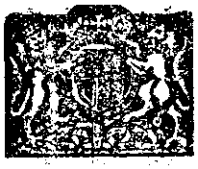

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PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

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OMBAY ACT No. XXXIX OF 1948—An Act to amend the Bombay Borstal Schools Act, 1929	379–383

The following Act of the Bombay Legislature having been assented to by the Governor General on the 8th April 1948 is hereby published for general information.

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXXIX OF 1948.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 1st May 1948.)

An Act to amend the Bombay Borstal Schools Act, 1929.

WHEREAS it is expedient to amend the Bombay Borsta
Bom. XVIII of 1929. Schools Act, 1929, for the purposes hereinafter appearing It is hereby enacted as follows :—

Short title. 1. This Act may be called the Bombay Borstal Schools (Amendment) Act, 1948.

Amendment of section 11 of Bom. XVIII of 1929. 2. In sub-section (*1*) of section 11 of the Bombay Borstal
Bom. XVIII of 1929. Schools Act, 1929, hereinafter called the said Act,—

(*i*) for the words "passed either before or after the commencement of this Act" the words and figures "passed under any law or undergoing imprisonment under an order made under section 123 of the Code of Criminal Procedure,
7 of 1898. 1898, for failure to give security" shall be substituted ;

(*ii*) after the words "his sentence" the words "or of the period of imprisonment which he is liable to undergo for failure to give security, as the case may be," shall be inserted ; and

(*iii*) after the word "sentenced" the words "or the period of imprisonment which he is liable to undergo for failure to give security, as the case may be" shall be inserted.

Amendment of section 12 of Bom. XVIII of 1929.

3. In sub-section (*1*) of section 12 of the said Act,—

(*i*) after the words "to exercise" the words "or to be likely to exercise" shall be inserted; and

(*ii*) after the words "twenty years of age" the words, figures and brackets "or where a licence granted under section 14 is revoked by the Provincial Government under clause (ii) of the proviso to sub-section (*1*) of section 15 or is, in the opinion of the Provincial Government, otherwise unsuitable for training in a Borstal school," shall be inserted.

Amendment of section 13 of Bom. XVIII of 1929.

4. In sub-section (*2*) of section 13 of the said Act, after the words "in British India" the words "or in an Acceding State" shall be inserted.

Amendment of section 13A of Bom. XVIII of 1929.

5. In section 13A of the said Act,—

(*i*) in sub-section (*1*)—

(*a*) after the words "British India" the words "or in an Acceding State" shall be inserted;

(*b*) after the words "the said province" the words "or the Government of the said Acceding State" shall be inserted; and

(*ii*) in sub-section (*2*) after the words "British India" the words "or in an Acceding State" shall be inserted.

Insertion of new section 13B in Bom. XVIII of 1929.

6. After section 13A of the said Act, the following new section shall be inserted, namely :—

Removal of person detained to civil hospital in Province for medical treatment.

"**13-B.** (*1*) If an offender detained in a Borstal School is suffering from any illness and the Inspector-General is satisfied that it is not possible to render to him proper medical care or treatment in the school, the Inspector-General may provide for the removal of such offender to any civil hospital in the Province for the purpose of undergoing medical treatment and for his return to the school after such treatment is undergone.

(*2*) The period during which an offender is absent from a Borstal school under sub-section (*1*) shall, for the purposes of computing his term of detention in the school, be deemed to be part of that detention."

Amendment of section 14 of Bom. XVIII of 1929.

7. After sub-section (*1*) of section 14 of the said Act, the following new sub-section shall be inserted, namely :—

"(*1A*) The Inspector-General may, subject to the prescribed conditions, discharge any offender who had been previously granted a licence but whose licence was subsequently revoked under section 15 and grant him a fresh written licence and in such case the provisions of this Act shall apply as if such fresh licence had been granted under sub-section (*1*)."

(*b*) if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school, undergo imprisonment of such description and for such period as it may direct:

Provided that the total period of supervision, detention and imprisonment under this section shall not exceed one year.

(*3*) The provisions of sub-section (*2*) of section 12 shall apply when an offender is directed to undergo imprisonment under sub-section (*2*) of this section."

Insertion of new section 17B in Bom. XVIII of 1929.

10. After section 17A of the said Act, the following new section shall be inserted, namely:—

Investigating Committee to investigate into complaints against offenders discharged on probation, etc.

"**17B.** (*1*) The Provincial Government may, by notification in the *Official Gazette*, appoint an Investigating Committee.

(*2*) The Inspector-General may, by an order in writing, require any offender—

(*a*) who is discharged on licence under section 14 or who is placed under supervision under section 16, and who is reported by the authority, institution, society or person under whose supervision he has been permitted to live or has been directed to remain, to be of bad behaviour, or

(*b*) who has broken any of the conditions of the licence granted to him under section 14,

to appear before the Investigating Committee within such time and at such place as may be specified in the order.

(*3*) The Investigating Committee shall examine the offender and after making such inquiry as it thinks fit into his conduct submit its report to the Inspector-General. If the Investigating Committee report that the conduct of such offender has been such that he is unfit for further detention in a Borstal school and in every case where an offender had been directed to remain under supervision under section 16, the Inspector-General shall forward a copy of the report of the Investigating Committee to the Provincial Government.

(*4*) The offender shall, during the period of the proceedings under this section, be detained in a Borstal school or in a special ward, or such other suitable part of a prison as the Inspector-General may by general or special order direct.

(5) If the offender fails to appear before the Investigating Committee in accordance with the order made under sub-section (2) or escapes while detained under sub-section (4), he may, on the requisition of the Inspector-General or any officer authorized by him in this behalf, be arrested by any officer of police without warrant and without an order of a Magistrate and brought before the Investigating Committee or sent under custody to the place of detention under sub-section (4), as the case may be.

(6) The period beginning from the date on which the order under sub-section (2) is passed by the Inspector-General and ending with the day on which an order is passed by the Inspector-General under section 15 or by the Provincial Government under section 15 or 16, as the case may be, shall be excluded in computing the total term of his detention in a Borstal school or in computing the period of one year referred to in section 16."

Amend. of section 18 of Bom. XVIII of 1929.

11. In section 18 of the said Act, after the words "from a Borstal school" the words "or has escaped from a civil hospital to which he was removed for treatment under section 13B" and after the words "to the Borstal school" the words "or to the civil hospital" shall be inserted.

Amendment of section 19 of Bom. XVIII of 1929.

12. In sub-section (2) of section 19 of the said Act, after clause (1) the following new clause shall be inserted, namely :—

"(m) the constitution, procedure, powers and duties of the Investigating Committee."

Amendment of section 21 of Bom. XVIII of 1929.

13. The proviso to section 21 of the said Act shall be deleted.

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